

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

6  
7 SEARS HOLDING COMPANY,

8  
9 Debtor.

10 - - - - - x

11  
12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15  
16 May 8, 2019

17 10:25 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24  
25 ECRO: NAROTAM RAI

1 HEARING re Hearing on Objections to Assumption and  
2 Assignment of Leases (related documents 2507 and 3 008)  
3  
4 HEARING re Objection of PREIT Services LLC, as agent for PR  
5 North Dartmouth LLC (document #1747)  
6  
7 HEARING re Objection by West Orange Plaia (Store No. 9413)  
8 (related document(s)1810, 3298, 3509)  
9  
10 HEARING re Objection (related document(s)1813, 3298, 3387)  
11  
12 HEARING re Objection to Debtor's Notice to Cure Costs and  
13 Potential Assumption and Assignment of Executory Contracts  
14 and Unexpired Leases in Connection with Global Sale  
15 Transaction (document #1817)  
16  
17 HEARING re Objection to Notice of Cure Amount  
18 (document(s)2222) D Management LLC's Revised Objection to  
19 Notice of Cure Amount (document 3442)  
20  
21 HEARING re Objection to Cure Amount document #1824)  
22  
23 HEARING re Objection Supplemental Objection of K-Bay Plaza,  
24 LLC (document #3487)  
25

1 HEARING re Objection of John C. Adams and Kennylugenia Adams  
2 (document #1830)  
3  
4 HEARING re Colonial Properties, LLC (document #1947)  
5  
6 HEARING re MCS Hemet Balley Center (document #1870)  
7  
8 HEARING re QKC Maui Owner LLC (document #1874)  
9  
10 HEARING re Objection to Designation Notice (document #3482)  
11  
12 HEARING re Objection Primark US Corp.'s (document #1923,  
13 #3187, #3411))  
14  
15 HEARING re Landlord, Fringe Area (II), S.E. (documents #1927  
16 and #3535)  
17  
18 HEARING re HomeGoods, Inc. (document #1946)  
19  
20 HEARING re The Kroger Co. (documents #1948, 3578)  
21  
22 HEARING re City of Minneapolis (document #1954)  
23  
24 HEARING re Landlord, Plaza del Caribe, S.E.(s.r.t.stores  
25 1905 and 7842)

1 HEARING re Landlord, Plaza de Cari be, S.E. (w.r.t. store  
2 1945) (documents # 1970 and #3532)

3  
4 HEARING re Cheddars Casual Cafte, Inc., rare Hospitality  
5 International Inc., Rare Hospitality Management (the "Darden  
6 Parties") document #1973

7  
8 HEARING re LBG Hilltop, LLC

9  
10 HEARING re CAPREF Burbank LLC (documents #1983 and #3382)

11  
12 HEARING re Westfield LLC (documents #1991 and #3511)

13  
14 HEARING re Concord Mall LP document # 1993

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16 HEARING re CBL & Associates Management, Inc. (document  
17 #1832)

18  
19 HEARING re CBL & Associates Management document #1833

20  
21 HEARING re Interprop Bedford, LLC (document #2107 and #3526)

22  
23 HEARING Re Vornado Relaty L.P. (documents #2109 and #3529)

24  
25 HEARING Re Federal Cobnstruction, Inc. document #2126)

1 HEARING Re Drayton Plains (MI) (document #2140)  
2  
3 HEARING Re Shidler/West Finance Partners V L.P. document  
4 #2155)  
5  
6 HEARING Re DART Warehouse Corporation ( document #2168)  
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8 HEARING Re Taubman Landlords  
9  
10 HEARING Re SWZ, LLC (document #2192)  
11  
12 HEARING Re CenterPoint Properties Trust  
13  
14 HEARING Re MOAC Mall Holding LLC (document #2199 and #3501)  
15  
16 HEARING Re A.R.E. Investment (document #2205)  
17  
18 HEARING Re EL Centro Mall, Ltd. and GC Columbia, LLC  
19 (document #2244)  
20  
21 HEARING Re Camegaran LLC ( document #2268)  
22  
23 HEARING Re Groveport Lynx, LLC (document #2285)  
24  
25 HEARING Re Lawrence Mart, LLC (document 2287)

1 HEARING Re Bradshaw Westwood Trust (documents #2299 and  
2 #3579)

3  
4 HEARING Re MCG Landlords (document #2375)

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6 HEARING Re Centennial Real Estate Co. and the Macerich  
7 Company document #2551)

8  
9 HEARING Re KTR Ohio LLC (document #2806)

10  
11 HEARING Re Living Spaces Furniture, LLC

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13 HEARING Re North K I-29 2004, LLC (documents #2810, #3512m  
14 #3515)

15  
16 HEARING Re Loyal Holdings DE LLC (document #3388)

17  
18 HEARING Re Banker -Properties Limited Partnership (document  
19 #3390)

20  
21 HEARING Re Pennsee, LLC (document #LLC)

22  
23 HEARING Re Manco Florida Associated, LLC (documents #2128  
24 and #3405)

25

1 HEARING Re Santa Rosa Mall, LLC (documents #2283 and #3408)  
2  
3 HEARING Re The Taubman Landlords (documents # 1879, #2179,  
4 #3410)  
5  
6 HEARING Re Biltmore Commercial Properties I, LLC (documents  
7 #2284 and #3413)  
8  
9 HEARING Re Auburndale Properties, Inc. (document #3504)  
10  
11 HEARING Re Crossroads Mall, LLC (document #3506)  
12  
13 HEARING Re Lakewood Shopping Center, LLC (documents #1845  
14 and #3524)  
15  
16 HEARING Re Plaza las Americas, Inc. (document #3531)  
17  
18 HEARING Re A.R.E. Investment Co. (document #3537)  
19  
20 HEARING Re ENIA Investments San Diego, LLC (document #3545)  
21  
22 HEARING Re Univest-BTC S&R, LLC (document #3549)  
23  
24 HEARING Re Saker ShopRites, Inc. (document #3565)  
25

1 HEARING Re M. Holtzman Realty, LLC (document #3569)

2

3 HEARING Re Lawrence Mart, LLC (document #3574)

4

5 HEARING Re California Drive In Theaters, Inc. (document  
6 #3575)

7

8 HEARING Re Ravenswood Station, LLC (document #3584)

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10 HEARING Re Stockton Mariposa (documents #2026 and #3538)

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12 HEARING Re MIDAMCO (document #3600)

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25 Transcribed by: Sonya Ledanski Hyde



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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. In RE: Sears  
3 Holdings Corporation, et al.

4 MS. MARCUS: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. MARCUS: Jacqueline Marcus from Weil, Gotshal,  
7 and Manges, LLP on behalf of Sears Holdings Corporation and  
8 its affiliated Debtors. With me in Court today is my  
9 colleague, Angeline Hwang. Your Honor, today's hearing has  
10 been set to deal with various issues arising out of the  
11 lease designation process and we very much appreciate on  
12 behalf of the Debtors the Court's flexibility in scheduling  
13 today's hearing.

14 Consistent with the bidding procedures order, the  
15 asset purchase agreement, the sale order, and the Court's  
16 prior assumption and assignment order, the Debtors filed  
17 numerous notice of cure amounts and assumption and  
18 assignment notices. To remind the Court and other parties  
19 in the courtroom, the cure notices set forth the Debtors'  
20 calculation of proposed cure amounts and the assumption and  
21 assignment notices that followed actually indicated in --  
22 the circumstances in which Transform had designated certain  
23 leases for assumption.

24 As indicated in the Debtors' response and  
25 reservation of rights that was filed at ECF Number 3651,

1 most of the issues to be addressed today are between  
2 Transform as purported assignee or its designee and the  
3 respective landlords.

4 The Debtors do want to note, however, as I'm sure  
5 is obvious to the Court, that it is in the Debtors' best  
6 interest for as many of the leases to be assumed and  
7 assigned as possible because Transform has agreed under the  
8 asset purchase agreement to pay the cure costs and because  
9 assumption and assignment spares the estate from rejection  
10 damage claims. At this point, Your Honor, I'll turn the  
11 podium over to Mr. Barefoot on behalf of Transform.

12 THE COURT: Okay.

13 MR. BAREFOOT: Good morning, Your Honor.

14 THE COURT: Morning.

15 MR. BAREFOOT: Luke Barefoot from Cleary,  
16 Gottlieb, Steen, and Hamilton for Transform Holdco and its  
17 affiliates. I want to echo what Ms. Marcus said, Your  
18 Honor, to open in terms of thanking you for your flexibility  
19 in scheduling this hearing and having us able to get these  
20 leases assumed and assigned.

21 In many ways, this hearing is effectively the  
22 closing chapter of the sale hearing, and the assumption and  
23 assignment of the integrated network of ground leases,  
24 leases, and subleases that underly the distribution and  
25 retail store network is integral to the transaction. Your

1 Honor, do you have the revised agenda that we filed very  
2 late last night or very early this morning?

3 THE COURT: Well, yes.

4 MR. BAREFOOT: Okay.

5 THE COURT: I'm assuming that's what was in the  
6 binder that was provided to chambers.

7 MR. BAREFOOT: That's correct, Your Honor. As an  
8 initial matter, I thought it might be helpful to talk about  
9 the various categories of objections that are up for hearing  
10 this morning and also to inform the Court of certain  
11 additional resolutions or adjournments that have further  
12 reduced the number of items that are on the agenda.

13 THE COURT: Okay, that's fine, and I'll note that  
14 the agenda is divided into, as you said, several different  
15 categories of types of objections. I think that's an  
16 efficient way to deal with these issues; although, I'll note  
17 that in a number of cases, the same objecting lessor has an  
18 objection in more than one category, but I think it's still  
19 more efficient to deal with it by category.

20 MR. BAREFOOT: Very good, Your Honor. In terms of  
21 the categories, the first one are objections to the adequate  
22 assurance of future performance that Transform and the  
23 designated Transform entities who will be the counterparties  
24 on the leases have provided.

25 There are a number of resolutions here that I can

1 report: K-Bay Plaza, which is A; the Kroger Company which  
2 is Number F; Loyal Holdings Delaware, LLC which is P;  
3 Pennsee, LLC which is Q; and MIDAMCO which is S have all  
4 either been resolved, adjourned, or withdrawn.

5 THE COURT: Okay.

6 MR. BAREFOOT: Under bucket two, which is the  
7 objections concerning compliance with restrictive covenants,  
8 I can report that, again, Items E and F for Loyal Holdings  
9 and Pennsee have been adjourned and are off the calendar.  
10 Univest-BTC S&R, LLC which is Agenda Item Number F is now  
11 resolved and there was a notice of withdrawal of that  
12 objection filed this morning.

13 THE COURT: I think that's H, though.

14 MR. BAREFOOT: I apologize. You're correct, Your  
15 Honor. MIDAMCO, as we indicated, is resolved. That's  
16 Number L and Number M, Living Spaces Furniture, LLC has also  
17 been resolved.

18 THE COURT: Okay.

19 MR. BAREFOOT: Moving down the docket, Your Honor,  
20 to Number 4, counterparties asserting objections related in  
21 the service of process, I can report that Item A, HomeGoods,  
22 Inc., has been resolved. And, again, F, Living Spaces  
23 Furniture, LLC has similarly been resolved.

24 THE COURT: Okay.

25 MR. BAREFOOT: Under Agenda Item Number 6, which

1 concerns insurance requirements, again, K-Bay Plaza which is  
2 Number A and Pennsee, LLC which is C have both been taken  
3 off the agenda.

4 THE COURT: Okay.

5 MR. BAREFOOT: I also want to report on a handful  
6 of changes to the universe of what the Debtors are assuming  
7 and assigning to Transform as a result of some of these  
8 recent resolutions. In particular, there are four  
9 additional store locations that were originally noticed to  
10 be designated for assumption and assignment that is a result  
11 of discussions with the counterparty. Those designation  
12 notices have been withdrawn and Transform has rejected the  
13 leases relative to the estate.

14 THE COURT: Okay.

15 MR. BAREFOOT: Those four store locations are  
16 Store 2001 in Piqua, Ohio; Store Number 7043 in Rock Hill,  
17 South Carolina; Store Number 3886 in Asheville, North  
18 Carolina; and Store Number 3483 in Ontario, California. And  
19 those notices of withdrawal of the designation notices have  
20 all been filed on the docket.

21 THE COURT: Okay.

22 MR. BAREFOOT: Your Honor, with that clarification  
23 on the scope of what's going forward, I'd like to take the  
24 Court's direction on how you'd like to proceed with the  
25 hearing. We do have Rob Riecker who's the CFO of the -- of

1 Transform here to testify as to adequate assurance. We've  
2 submitted a declaration from Mr. Riecker with our reply. We  
3 could either have a brief opening statement both from  
4 Transform and from any remaining objecting landlords and  
5 then proceed to testimony or we could proceed straight to  
6 testimony, depending on Your Honor's preference.

7 THE COURT: Well, unless there are any further  
8 resolution, I think we should just proceed to Mr. Riecker's  
9 testimony.

10 MR. BAREFOOT: Very good, Your Honor. My  
11 colleague, Mr. Weaver will handle that.

12 THE COURT: Okay.

13 MR. WEAVER: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. WEAVER: Andrew Weaver of Cleary, Gottlieb,  
16 Steen, and Hamilton on behalf of Transformco. We would like  
17 to present our witness, Robert Riecker, CFO of Sears and CFO  
18 of Transformco.

19 THE COURT: Okay. I have Mr. Riecker's  
20 declaration. Is anyone going to want to cross examine him  
21 on that declaration? No?

22 MR. WEAVER: On that basis, Your Honor, we would  
23 ask to move his declaration and exhibits into the record  
24 under seal.

25 THE COURT: Okay. Does anyone object to the

1 admission of Mr. Riecker's declaration as his direct  
2 testimony and the exhibits thereto? Okay. I have reviewed  
3 the declaration and the exhibits and I will admit them as  
4 his direct testimony with respect to his declaration which  
5 is dated May 6th, two days ago, and the Exhibits  
6 (indiscernible) A through F to that declaration. I do -- Is  
7 Mr. Riecker here?

8 MR. WEAVER: Yes, he's (indiscernible).

9 THE COURT: Okay. Let me just ask you, sir,  
10 sitting here today. I appreciate that your declaration is  
11 dated two days ago. Is there anything in it that you wish  
12 to change?

13 MR. RIECKER: There is not, Your Honor.

14 THE COURT: Okay. All right, thank you. All  
15 right.

16 MR. WEAVER: Thank you, Your Honor. I'll return  
17 the podium to Mr. Barefoot.

18 THE COURT: Okay. Let me just ask, because I'm  
19 assuming you're going to oral argument at this point --

20 MR. BAREFOOT: I think that would be the next  
21 logical step.

22 THE COURT: Before we get to that, let me ask any  
23 of the objectants whose objections are still under  
24 consideration for today, whether they have any evidence that  
25 they would like to submit on the adequate assurance issue.

1 MR. SAYDAH: Good morning, Your Honor. For the  
2 record, Gilbert Saydah, CRK Law, here today on behalf of  
3 Bradshaw Westwood Trust. Your Honor, with respect to the --

4 THE COURT: Morning.

5 MR. SAYDAH: -- issue of adequate assurance of  
6 future performance, we do not directly have any evidence to  
7 present. Yesterday, we submitted a declaration in support  
8 of our supplemental objection. This relates to the issue of  
9 365(1) and our request for additional security pursuant to  
10 that provision of the code. Your Honor, we weren't aware  
11 that this was going to be an evidentiary hearing to produce  
12 a witness. It was not teed up as an evidentiary hearing.

13 THE COURT: Okay.

14 MR. SAYDAH: This is the initial hearing on our  
15 pleading, so pursuant to Local Rule 9014-2 and Your Honor's  
16 amended procedures order in this case, this is not an  
17 evidentiary hearing with respect to that.

18 THE COURT: All right. I'm not sure I have that  
19 declaration. I take your word for it it was filed on the  
20 docket. I'm just not sure a copy made its way to chambers.

21 MR. SAYDAH: Yes, Your Honor. I'd be happy to  
22 hand up a copy. I'm not --

23 THE COURT: Could you do that?

24 MR. SAYDAH: Certainly.

25 MR. BAREFOOT: Sorry, just as a point of



1 clarification, are you proffering the declaration --

2 THE COURT: No, he's not --

3 MR. SAYDAH: No.

4 THE COURT: -- because the --

5 MR. SAYDAH: No, I'm not.

6 THE COURT: -- the declarant's not here to

7 testify. I just wanted to make sure I have looked at it.

8 And just to be fair, that really wasn't part of this section

9 of the hearing. There's a separate section in the agenda --

10 MR. SAYDAH: Correct, Your Honor.

11 THE COURT: -- covering 365.

12 MR. SAYDAH: I just wanted to make sure that I

13 wasn't waiving anything --

14 THE COURT: That's fine.

15 MR. SAYDAH: -- just to -- if I may approach, Your

16 Honor?

17 THE COURT: Sure. Thank you. Okay, thanks.

18 MR. SAYDAH: Thank you, Your Honor.

19 THE COURT: So, again, on the adequate assurance

20 issue, it appears there's no additional evidentiary

21 submission, so why don't we go to oral argument?

22 MR. BAREFOOT: Your Honor, on the issue of

23 adequate assurance, given the Court's sealing motion and to

24 avoid sealing the courtroom, I would propose that in

25 remarks, parties avoid referring to the specific figures and

1 details of any of the financial information that was filed  
2 under seal.

3 THE COURT: Well, we'll see where we go on that.  
4 I mean, if -- it may be that I'll have to go off the record  
5 -- go off the public record at some point, but --

6 MR. BAREFOOT: Okay. I'll start --

7 THE COURT: I think people should be mindful  
8 during oral argument of trying to avoid, unless they believe  
9 it's absolutely necessary, getting into the details that  
10 would -- that were redacted as part of the sealing order.

11 MR. BAREFOOT: Very good, Your Honor. I, in my  
12 remarks right now, will limit it to publicly available  
13 information and avoid any of that. If any argument from the  
14 landlord community requires a response, we'll ask to seal  
15 the courtroom.

16 On adequate assurance, Your Honor, the Court  
17 already determined on the evidence that was presented at the  
18 sale hearing that Transform provided adequate assurance of  
19 future performance based on its business plan and its  
20 anticipated capitalization.

21 THE COURT: Right. Although, these objectors  
22 reserve their rights on that point.

23 MR. BAREFOOT: You're --

24 THE COURT: There's no one who filed a late  
25 objection that would've been bound by that order, in other

1 words.

2 MR. BAREFOOT: You're absolutely correct, Your  
3 Honor, but I think the overarching point is that nothing has  
4 changed in the circumstances of Transform in the three  
5 months between the sale hearing and now that would require  
6 revisiting the Court's conclusion. And to the contrary,  
7 Transform has provided additional evidence that of course it  
8 couldn't have in February of its financial performance and  
9 its return towards profitability.

10 First off, the Court was provided details on a new  
11 real estate loan that Transform closed just two weeks ago.  
12 That financing -- the amount of which I will not mention --  
13 paid down in full both the bridge loan and the exit facility  
14 and while I won't go into the details as reflected in Mr.  
15 Riecker's declaration, that loan was provided almost  
16 entirely by third-party funders and provides much more  
17 favorable terms with lower capital expenditure amounts and  
18 greater flexibility on covenants than what was in the bridge  
19 loan and the exit facility.

20 That loan is and really should be interpreted as a  
21 sign that third-party market participants have supported and  
22 believe in Transform's abilities and in Transform's business  
23 plan going forward. Your Honor, I think the other -- we've  
24 also included in Mr. Riecker's declaration evidence of new  
25 insurance policies that Transform has bound and that will

1 provide landlords with comfort on both personal injury  
2 claims and property damage claims.

3 I think the other overarching point I'd like to  
4 make on adequate assurance is that most of the objections  
5 focus on their particular -- the particular Transform  
6 subsidiary that is proposed to be the counterparty on the  
7 agreement. To address that question and eliminate any  
8 concern, with our reply papers we filed a revised proposed  
9 form of order which would require Transform Midco to give a  
10 guarantee of all obligations under the lease to any landlord  
11 that made an adequate assurance objection.

12 In the capital structure, Transform Midco sits two  
13 levels below Transform Holdco. Transform Midco acquired --  
14 Transform Midco or its subsidiaries acquired all of the  
15 assets that Transform purchased from the Debtors' estates.  
16 We provided a detailed balance sheet for Transform Midco as  
17 part of the adequate assurance package, and again, while I  
18 won't refer to the specific numbers, that reflects very  
19 significant real estate and equipment assets and a very  
20 significant equity cushion.

21 The proposed form of order requires Transform  
22 Midco within 15 business days to execute guarantees  
23 substantially in the form attached to the proposed order and  
24 deliver them to each of the landlords that made objections.  
25 So I think with that package, Transform has more than

1 sufficiently provided evidence of adequate assurance of  
2 future performance and bolstered, really, the evidentiary  
3 package that the Court already had available when it made  
4 the adequate assurance finding in February.

5 THE COURT: Okay.

6 MR. BAREFOOT: I'll turn the podium over to any of  
7 the objectors.

8 THE COURT: Okay. I'll hear people in the  
9 courtroom first and then if there are people on the phone  
10 who want to be heard after it, I'll hear them.

11 MR. SAYDAH: Your Honor, again for the record,  
12 Gilbert Saydah of CKR Law on behalf of Bradshaw Westwood  
13 Trust. Your Honor, our adequate assurance objection sort of  
14 goes hand in hand with our 365(1) argument, arguing that the  
15 landlord has reviewed the adequate assurance information  
16 provided by Transform Holdco and in connection with that is  
17 demanding the additional security that we requested.

18 I believe that they're two separate issues, Your  
19 Honor. Your Honor can make a finding of adequate assurance  
20 of future performance and it doesn't affect our ability to  
21 require security under 365(1). Debtors sort of conflate  
22 those in their reply, but to the extent Your Honor would  
23 like to -- would prefer that I wait on this issue to Section  
24 5 of the agenda, I'm happy to. Just don't want to waive the  
25 issue.

1 THE COURT: Well, I guess the risk you run with  
2 limiting it to 365(1) is the more narrow scope of that  
3 section. There's not a whole lot of caselaw interpreting  
4 it, but the legislative history states, "this permits the  
5 landlord to get his usual, reasonable security deposit from  
6 an assignee tenant," and that's consistent with the plain  
7 language of the statute which refers to a deposit or other  
8 security for the performance of the Debtors' obligations  
9 (indiscernible) substantially the same as would have been  
10 required by the landlord upon the initial leasing to a  
11 similar tenant.

12 MR. SAYDAH: Correct, Your Honor.

13 THE COURT: And the only other thing I'll say is  
14 the statute is phrased as the lessor of the property may  
15 require, rather than the Debtor shall provide. That,  
16 really, hasn't been interpreted very much in the caselaw.

17 MR. SAYDAH: You're correct, Your Honor.

18 THE COURT: So --

19 MR. SAYDAH: Your Honor --

20 THE COURT: But if you want to limit it to -- just  
21 to that security deposit issue, that's fine, which has a  
22 whole separate inquiry as to what, again, substantially the  
23 same as would have been required by the landlord upon the  
24 initial leasing to a similar tenant.

25 MR. SAYDAH: Correct, Your Honor. Your Honor,

1 given the evidentiary record, I am not going to contest  
2 their -- the evidence that they've provided.

3 THE COURT: Okay.

4 MR. SAYDAH: I'm not sure that the guarantee and  
5 the credit enhancement that they're proposing alters the  
6 dynamic that much, but I'm not going to be the lone man  
7 fighting in the wilderness on adequate assurance. I will  
8 limit it with respect to 365(1).

9 THE COURT: Okay. And on -- why don't we do -- I  
10 mean, Bradshaw Westwood is the only 365(1) party, so --

11 MR. SAYDAH: Correct, Your Honor.

12 THE COURT: Since counsel is up, why don't we deal  
13 with that now. The Debtors were correct that -- I'm sorry,  
14 not the Debtors.

15 MR. BAREFOOT: Transform.

16 THE COURT: Transform Holdco was correct in  
17 pointing out in its reply to the objection that the  
18 objection itself had not alleged any facts that would meet  
19 Section 365(1) because they didn't refer to any facts that  
20 covered the language that I've already quoted. Just looking  
21 very quickly at Mr. (indiscernible) declaration, I think  
22 there's an attempt to do that now, and it would seem to me  
23 that that's a factual issue that needs to be developed.

24 For example, I don't know whether the tenant in  
25 this store is, in essence, the same tenant or not and

1 whether that tenant had a security deposit or whether this  
2 would be a new deposit for, in essence, a new tenant as  
3 opposed to the same business under a new name. I think the  
4 parties would be well advised to discuss that issue and I  
5 can put it on later. That raises the issue, though, that,  
6 as I understand it, unless there's an extension of time the  
7 assume or reject period may expire before our next hearing.

8 MR. SAYDAH: That's correct, Your Honor.

9 THE COURT: So I'm not sure where we go on that.

10 MR. SAYDAH: Your Honor --

11 THE COURT: I could say that filing an objection  
12 that didn't raise this issue with any facts given that  
13 deadline means you're out of luck. On the other hand, if  
14 you're prepared to grant the extension so that the facts  
15 could actually be determined, I'd probably be -- I probably  
16 wouldn't do that.

17 MR. SAYDAH: Your Honor, that colloquy. I will  
18 state that if you look at our initial objection that we  
19 filed, it states pursuant to 365, we demand secured in a  
20 form specified --

21 THE COURT: Well, I know.

22 MR. SAYDAH: -- in the statute. And then in our  
23 supplement, we specify the dollar amount. So it's not as if  
24 there was no facts presented.

25 THE COURT: Well, I mean, that's -- but neither of



1 those facts actually -- or neither of those statements did  
2 anything to suggest, to me, at least, that 365(1) was met  
3 and I believe this is a provision where the landlord has the  
4 burden of proof on the deposit.

5 MR. SAYDAH: Your Honor, perhaps we should -- why  
6 don't we push this off for -- we will stipulate to extend  
7 the 364 deadline to the next omnibus hearing.

8 THE COURT: Okay.

9 MR. SAYDAH: And we can talk about this offline  
10 and --

11 THE COURT: All right.

12 MR. BAREFOOT: Your Honor, could I suggest June  
13 30th for the time to assume or reject? The next omnibus  
14 hearing is only May 21st, and --

15 THE COURT: Okay.

16 MR. BAREFOOT: I also don't want to hold a gun to  
17 Your Honor's head.

18 THE COURT: I think you're going to -- now that  
19 the issue's actually been joined with facts, I think you can  
20 probably figure this out well before then, but if you can't,  
21 I think extending it to that date does make sense.

22 MR. SAYDAH: June 30th?

23 THE COURT: Yeah.

24 MR. SAYDAH: We'll stipulate to that, Your Honor.

25 THE COURT: Okay.

1 MR. BAREFOOT: Your Honor, we'll prepare a  
2 stipulation reflecting that and submit it.

3 THE COURT: All right. That'll give you time to  
4 look into the declaration --

5 MR. SAYDAH: So we'll remove us from the --

6 THE COURT: Yeah.

7 MR. SAYDAH: -- from this order.

8 MR. BAREFOOT: Correct.

9 MR. SAYDAH: Thank you, Your Honor.

10 THE COURT: Okay. Very well.

11 MR. BAREFOOT: Your Honor, there being no other  
12 object --

13 THE COURT: Well, let me -- I'm not sure the  
14 people on the phone knew that no one else was standing up in  
15 the courtroom, so does anyone on the phone want to address  
16 the adequate assurance issue? There's someone behind you,  
17 excuse me.

18 MR. LEMKIN: Sorry, I didn't see (indiscernible).  
19 Your Honor, Joseph Lemkin with Stark and Stark on behalf of  
20 SWZ, LLC. We were one of the objecting parties on adequate  
21 assurance. Primarily, it had to do with our proposed -- the  
22 assignee was not the entity. So we just wanted to confirm -  
23 -

24 THE COURT: Right.

25 MR. LEMKIN: -- on behalf of SWZ that we also

1 would be the beneficiary of the Midco guarantee.

2 THE COURT: Every adequate assurance objector --

3 MR. LEMKIN: Yes.

4 THE COURT: Correct? Unless you separately  
5 resolve that on some other basis.

6 MR. BAREFOOT: That's exactly correct, Your Honor,  
7 and there's a schedule to the revised proposed order that  
8 identifies each of those parties.

9 THE COURT: Okay.

10 MR. LEMKIN: Thank you.

11 THE COURT: Very well. All right. Hearing no one  
12 else, and based on my review of Mr. Riecker's declaration  
13 and the exhibits to it including the consolidated balance  
14 sheet and corporate chart, I find that Transform has  
15 established on this record adequate assurance of future  
16 performance for purposes of Section 365 of the Bankruptcy  
17 Code and to the extent not otherwise adjourned, will deny  
18 the adequate assurance objections.

19 The caselaw is clear that, although the Bankruptcy  
20 Code does not define adequate assurance, Courts are  
21 counseled to give the phrase a pragmatic construction  
22 focusing on the assignees' ability to fulfill the financial  
23 obligations under the lease. That construction is clearly  
24 short of a guarantee of payment, but depending on the fact  
25 of the situation, there should be a sufficient record to

1 establish with reasonable assurance that, in fact, the  
2 Debtor or in this case the Debtors' assignee will be able to  
3 provide performance over the course of the remaining term of  
4 the lease.

5 In making that determination, Courts look to a  
6 non-exclusive list of factors including the Debtors' payment  
7 history or the performance of the assignee. Here, as is  
8 pointed out in Transform's reply to the objections, the  
9 Debtors' payment history is, to some extent, relevant  
10 because in many ways Transform is operated by many of the  
11 same people and running much the same business, although, as  
12 Mr. Riecker states, with substantial proposed cost cutting  
13 and other revenue improvements as the Debtor did and that  
14 the stores at issue here are the Debtors' profitable stores.

15 In addition, Courts look to the presence of a  
16 guarantee and/or security deposit, evidence of profitability  
17 in the form of projections or other testimony, and whether  
18 the lease is at or below prevailing market rate. See, for  
19 example, Androse Associates of Allaire, LLC versus A&P, 472  
20 B.R. 666, 675, S.D.N.Y. 2012; In RE: Martin Paint Stores,  
21 199 B.R. 258, 263 Bankruptcy S.D.N.Y. 1996; as well as,  
22 generally, 390 Park Avenue Associates, LLC v. Park Avenue  
23 Garage, LLC, 403 Fed. Appendix 555 Second Circuit, December  
24 14, 2010.

25 Here, the evidence shows not only that Transform

1 has substantial available cash but that the amount of that  
2 available cash has improved since the record established at  
3 the sale hearing.

4 It also shows that the financing that Transform  
5 currently has is improved on a covenant basis as well as a  
6 cashflow basis since that hearing and it shows that on a  
7 consolidated basis, Transform has substantial equity, albeit  
8 on a balance sheet basis, and projections that, given the  
9 nature of the stores underlying its business model as well  
10 as its other assets, show a prompt return to substantial  
11 positive EBITDA.

12 In addition, Transform has agreed to provide the  
13 guarantee of the intermediate holding company which, based  
14 on the other evidence before me, has the access to the  
15 substantial equity on the consolidate balance sheet that I  
16 referenced earlier. Given all of those facts, I conclude  
17 that there is adequate assurance of future performance and  
18 that Transform has met its burden under Section 365 to show  
19 that.

20 MR. BAREFOOT: Thank you, Your Honor. Moving to  
21 the next section of the agenda, this issue deals with  
22 objections asserted by counterparties to property leases as  
23 to Transform's intent to comply with restrictive covenants.

24 By way of background, the assumption and  
25 assignment procedures order consistent with the sale order

1 did provide Transform the option to specify if there were  
2 any restrictive covenants that were contained in executory  
3 contract that did not run with the land and was not  
4 integrated with another executory contract could be rejected  
5 and the other contracts could be assumed and assigned free  
6 and clear of those restrictive covenants where the notice so  
7 specified.

8 This remaining -- the revised proposed order  
9 includes, in Paragraph 25, a specific list of -- in  
10 Paragraph 25 and then in Schedule 3, the specific list of  
11 landlords and counterparties whose leases are being assigned  
12 without the accompanying restrictive covenants.

13 None of the counterparties who have objected and  
14 who are on the section of the agenda under Item Number 2  
15 appear on that list, so we believe that we have effectively  
16 resolved all of these objections by narrowing the scope of  
17 relief that we were seeking and making clear that it is only  
18 those counterparties that did not object to the designation  
19 notice on this basis whose leases will be assigned free and  
20 clear of restrictive covenants.

21 THE COURT: Okay. Let me make sure I understand  
22 one point. I think you've been quite clear on this, but I  
23 want to make sure on one point. The sale order and the  
24 procedures order had a mechanism, as you said, for  
25 identifying restrictive covenants and the parties to them

1 and providing them notice. I'm assuming that, therefore,  
2 the order that you're submitting that has the language about  
3 free and clear applies only to people that got that notice  
4 and that you're still pursuing the free and clear point on.

5 MR. BAREFOOT: That is correct, Your Honor.

6 THE COURT: Okay. So, first, you believe that the  
7 parties who raised this issue -- they're listed on Item 2 in  
8 the agenda -- are not parties to leases with such easements  
9 or restrictive covenants?

10 MR. BAREFOOT: There may well be easements or  
11 restrictive covenants --

12 THE COURT: But you're not looking to be free of  
13 them?

14 MR. BAREFOOT: Correct, Your Honor.

15 THE COURT: Right.

16 MR. BAREFOOT: We will -- whatever the restrictive  
17 covenants or easements are for parties that are not on  
18 Schedule 3, we will take them cum onore.

19 THE COURT: Okay. And then secondly -- so  
20 therefore, the only parties who are actually having the  
21 lease assigned to a Transco entity or designee free and  
22 clear of a specific easement or other covenant running with  
23 the land are those parties who, A, got notice; B, got notice  
24 of that specific covenant or easement being sought to be  
25 free and clear of; and who have not objected.

1 MR. BAREFOOT: That is correct, Your Honor.

2 THE COURT: Okay. All right. So to me, that  
3 satisfies 363(f) insofar as the consent aspect of it and  
4 given that there was clear notice and lack of objection  
5 knowing that this issue was going to be brought before the  
6 Court and I believe would resolve each of these objections  
7 unless there's something that both of us are missing here.

8 MR. BAREFOOT: No --

9 THE COURT: Let me ask, now then, whether any of  
10 the objectors wants to be heard on this particular issue,  
11 the free and clear issue.

12 MR. LEMKIN: I don't think we were -- Joe Lemkin  
13 with Stark and Stark on behalf of SWZ. I don't think we  
14 were included in that list, but I just want to make -- but  
15 we did raise an issue about this and I haven't seen the  
16 order to see whether or not we have -- SWZ has or has not  
17 been included.

18 THE COURT: Well, the order will have to be clear  
19 on this point. I don't think this is a long list, right?

20 MR. BAREFOOT: It is not.

21 THE COURT: Okay. So I think you'll be able to  
22 make it clear --

23 MR. LEMKIN: Okay.

24 THE COURT: -- to the --

25 MR. LEMKIN: Right.



1 THE COURT: -- respective landlords to the extent  
2 that it isn't. I have a question on this. A couple of  
3 these were adjourned. I think you're adjourning the  
4 objection for other issues, but on this one, I would think  
5 that it's just going to fall away, right, or are you still  
6 going to be fighting with those people over the free and  
7 clear point?

8 MR. BAREFOOT: I hope not, Your Honor --

9 THE COURT: Okay.

10 MR. BAREFOOT: But I will also note that the  
11 majority of the adjournments are not because we intend to  
12 continue fighting, but because we're having productive  
13 discussions.

14 THE COURT: Okay. All right, that's fine. That's  
15 fine. So --

16 MR. BAREFOOT: I also will just note, Your Honor -  
17 -

18 THE COURT: I think as far as the objections that  
19 are going forward today on this issue, then, each of them is  
20 resolved by what you've stated on the record.

21 MR. BAREFOOT: Very good, Your Honor. I just do  
22 want to note that the revised proposed form of order that we  
23 filed early this morning/late last night to effectuate some  
24 of the resolutions that I reflected, we do have to make some  
25 amendments to Schedule 3.

1 THE COURT: That's fine.

2 MR. BAREFOOT: So we will submit that  
3 subsequently.

4 THE COURT: Okay. Very well.

5 MR. BAREFOOT: Your Honor, next is Item 3 on the  
6 agenda which are the subset of remaining landlords that have  
7 objected on the grounds that Transform must take all leases  
8 of real property cum onore with all outstanding obligations.  
9 I believe that we have resolved this through two changes to  
10 the revised form of order. Does Your Honor have the revised  
11 proposed form of order?

12 THE COURT: I'm not sure I do.

13 MR. BAREFOOT: Why don't I hand it up.

14 THE COURT: Let me make sure just in case that you  
15 should give it to me.

16 MR. BAREFOOT: May I approach, Your Honor?

17 THE COURT: Sure. Thank you.

18 MR. BAREFOOT: And, Your Honor, one of those is  
19 the clean and one of them is a blackline as against a  
20 version that we filed with our reply on Monday evening.

21 THE COURT: Okay.

22 MR. BAREFOOT: And if we could look specifically  
23 at first Paragraph 12 of the revised proposed order.

24 THE COURT: Right.

25 MR. BAREFOOT: And specifically, the third full

1 sentence of this order provides that, "As between the  
2 Debtors and the buyer, the buyer shall be solely responsible  
3 for any liability arising and owed pursuant to the terms of  
4 the designated lease," it says, "listed on Exhibit A after  
5 the closing, buyer or buyer's assignee, if applicable,  
6 acknowledges and agrees that from an after the entry of this  
7 revised assumption and assignment order or such earlier date  
8 as applies with respect to designated leases for which no  
9 timely objection was filed pursuant to the assumption and  
10 assignment order with respect to a designated lease on  
11 Exhibit A in accordance with this revised assumption and  
12 assignment order, it shall comply with the terms of each of  
13 such designated lease in its entirety including any  
14 indemnification obligations expressly contained in such  
15 designated lease including with respect to events that  
16 occurred prior to the entry of this revised assumption and  
17 assignment order for which cure costs were not known,  
18 liquidated, or due and owing as of such date."

19 And then it goes on to discuss the reservation of  
20 rights as between the estate and Transform. Similarly, if I  
21 could point the Court to Paragraph 16 of the revised  
22 proposed order.

23 THE COURT: Let me just make sure, Exhibit A  
24 includes all of the leases.

25 MR. BAREFOOT: It's all the leases that are being

1 assumed and assigned pursuant to this order.

2 THE COURT: There's no subset that -- this applies  
3 to all of the leases that are being assumed.

4 MR. BAREFOOT: That is correct, Your Honor.

5 THE COURT: Okay.

6 MR. BAREFOOT: And similarly, Paragraph 16, the  
7 second sentence provides, "Upon assumption and assignment of  
8 any designated lease, the Debtors and their estates shall be  
9 relieved of any liability for breach of such designated  
10 lease after the closing pursuant to the asset purchase  
11 agreement in Section 365(k) of the Bankruptcy Code and the  
12 buyer shall be responsible for any costs or expenses  
13 including, without limitation, for royalties, rents,  
14 utilities, taxes, insurance, fees, any common area or other  
15 maintenance charges, promotional funds, and percentage rent  
16 arising under any of the designated leases on Exhibit A  
17 attributable to the portion of such calendar year occurring  
18 prior to such lease assignment or for any previous calendar  
19 year."

20 So I think with those two provisions, Your Honor,  
21 the issues that many of these landlords were raising as to a  
22 potential timing issue, that under many of these leases  
23 there are taxes, common area charges, or other adjustments  
24 or true-ups that may relate to a prepetition or a pre-  
25 assignment time period, I think we've made clear that so

1 long as those charges are not now known and due and owing,  
2 in which case, they would've had to have been timely  
3 asserted as cure costs, that if and when the become due,  
4 pursuant to the terms of the designated lease, Transform  
5 will pay them to the extent required by such lease.

6 THE COURT: Okay. And your reply had made that  
7 clear as far as indemnification was concerned. This just  
8 makes it clearer.

9 MR. BAREFOOT: I agree, Your Honor. I think the  
10 incremental change between the reply and this revised  
11 proposed order is that it indisputably pick up all the  
12 taxes, common area charges, royalties, and other categories  
13 of true-ups.

14 THE COURT: Right. Okay. Does anyone have  
15 anything to say on this issue?

16 MR. KENNEDY: Your Honor, on the phone. I don't  
17 know if you want to go to the folks on the phone or still in  
18 the courtroom, but --

19 THE COURT: Well --

20 MR. KENNEDY: -- I would like to speak to this if  
21 I can.

22 THE COURT: Okay. Why don't we hear you now and  
23 then someone has stood up, too, I'll hear him next, but why  
24 don't you go ahead.

25 MR. KENNEDY: Thank you, Your Honor. Gerald

1 Kennedy on behalf of MCS Hemet Valley Center, and this  
2 really goes to, I think, both the third item and the second  
3 item that you already discussed concerning the covenants,  
4 but -- and we appreciate the additional language in the  
5 proposed order as to the cum onore and the indemnification  
6 and those, if you will, financial obligations, but back to  
7 Item 2 in the covenants and we are not on Schedule 3, so we  
8 agree that we're not affected by any free and clear, if you  
9 will, provision.

10 However, just to be clear, and our view is that  
11 use restrictions and other restrictions in the lease, those  
12 are also taken cum onore and therefore that, it's just clear  
13 for the record, and I believe I heard counsel indicate that  
14 that was the case when we were discussing the Item 2 that  
15 this buyer Transform or its Transform entity would, in fact,  
16 be taking the contract as it is, the lease as it is, all  
17 terms and conditions.

18 THE COURT: Okay. I think I understand that point  
19 and I'll hear from Transform's counsel on that in a second.

20 MR. MAY: Thank you, Your Honor. Lawrence May.  
21 We represent K-Bay Plaza, landlord of the property in the  
22 Bronx. Before -- right now, our client is a defendant in  
23 two personal injury actions that were commenced with respect  
24 to incidents which took place in the lease premises. We had  
25 made a demand upon the Debtor to accept the defense of these

1       litigations pursuant to the terms of the lease. The Debtor  
2       has refused.

3               I appreciate the language that's being inserted in  
4       the proposed order with respect to indemnification. The  
5       point I want to make is that there's no specific reference  
6       to defense. I assume that is part of the assumption that  
7       the proposed assignee will not only indemnify but accept the  
8       tender of the defense of these two litigations which the  
9       Debtor has previously refused.

10              THE COURT: Right? Okay. It's really a similar  
11       point. There are certain obligations under leases that go  
12       beyond the list in Paragraph 16.

13              MR. MAY: Thank you, Your Honor.

14              THE COURT: Okay.

15              MR. BAREFOOT: Your Honor, for the record, Luke  
16       Barefoot for Transform. Your Honor, I don't know the  
17       specific terms of the leases of Mr. Kennedy's client or of  
18       the K-Bay premises. But whatever the terms of those leases  
19       require, as --in terms of the scope of indemnity or the  
20       scope of true-ups, whatever the terms of those leases  
21       provide, Transform intends to perform under on a go-forward  
22       basis.

23              THE COURT: Well, I think -- let me break that  
24       down a little bit. I think that based on the assignment of  
25       the lease, that's true as a matter of law. The limitations

1 in 365(f) really go to termination provisions or the  
2 equivalent or any assignment provisions, but once the leases  
3 is assigned, it's assigned cum onore; although, those  
4 termination provisions can't be then used to terminate the  
5 lease or weigh down the assignment of the lease.

6 I think what you're doing here in 16, and to some  
7 extent in 12, is just to parse out vis-à-vis the Debtor  
8 who's responsible for what as far as Transform and the  
9 Debtor are concerned. But I don't want there to be any  
10 implication that ongoing performance obligations aren't  
11 being assigned along with the benefits of the lease. I  
12 mean, I don't know if the answer here is to say, and the  
13 buyer shall be responsible for, among all other performance  
14 obligations, any costs and expenses.

15 MR. BAREFOOT: I will point out, Your Honor, that  
16 the list of things in Paragraph 16 is just an including  
17 without limitation. It's not exhaustive and whatever the  
18 terms --

19 THE COURT: Right. But it's limited to costs and  
20 expenses, and there are some -- I'm sure there are ongoing  
21 performance obligations, too, such as accepting defense, or,  
22 I don't know, whatever it is. Maintaining garbage disposal,  
23 for example. So I don't want to carve out any right that  
24 you have under 365(f). I don't want this language to take  
25 away from other provisions in this order and the prior



1 orders that would invalidate provisions that are properly  
2 invalidated under 365(f).

3 But on the other hand, on a going forward basis,  
4 even those provisions should apply going forward in the  
5 sense that they exist as far as the new tenant is concerned  
6 when it goes to assign the lease, for example. So I think  
7 you need to make the -- probably say, and the buyer shall be  
8 responsible for any performance obligations including,  
9 without limitation, any costs or expenses in the 16.

10 MR. BAREFOOT: Well, we can consider a tweak, Your  
11 Honor, but the issue with what you just proposed is if we  
12 say performance obligations, 16 picks up prior time periods.

13 THE COURT: No, ongoing performance obligations.  
14 Post-assignment.

15 MR. BAREFOOT: But we will implement Your Honor's  
16 comment. I'm not sure that's --

17 THE COURT: I think you're doing a lot in this  
18 paragraph. It may be that you want to have just a separate  
19 paragraph.

20 MR. BAREFOOT: Fair enough, Your Honor.

21 THE COURT: This paragraph really parses through  
22 as between the Debtors and Transform, who's responsible. I  
23 think it's clear that the Debtor is not responsible for the  
24 -- to the landlords for the post-assignment obligations, but  
25 Transform is responsible.

1 MR. BAREFOOT: Understood, Your Honor. I think we  
2 can probably just add a simple additional sentence to 16  
3 that says, following the date of assignment, Transform shall  
4 be responsible for whatever the performance obligations are  
5 as specified in the designated release.

6 THE COURT: Right. That's fine.

7 MR. BAREFOOT: Okay.

8 THE COURT: Okay.

9 MR. KENNEDY: Your Honor, Gerald Kennedy again for  
10 MCS Hemet. I think that would suffice and just, again, to  
11 be clear and for the record, the provisions that we're  
12 speaking to in addition to the financial performance  
13 obligations are the use restrictions in performance  
14 consistent with the lease and I think --

15 THE COURT: Right.

16 MR. KENNEDY: -- what Your Honor is suggesting  
17 what counsel has indicated will be added will take that in  
18 consideration. But again, just for the record, in our  
19 objections, which are ECF Documents 1870, 3366, and 3420, we  
20 were primarily or at least focusing in on -- again, this  
21 really goes back to the covenant issue as well as far as use  
22 restrictions, but this effectively will continue to be used  
23 as, effectively, a Sears department store.

24 And that's what our lease provides, so just want  
25 to make sure the record is clear that that's -- those are

1 the obligations that are cum onore and that'd be taken on by  
2 the Transform entity.

3 THE COURT: Well, that's why I raised --

4 MR. KENNEDY: And any subsequent --

5 THE COURT: That's why I raised the 365(f) issue.  
6 I think it's two different things. Congress did carve out  
7 the landlord's ability to assert provision of a lease that  
8 unduly restrict assignment and assumption. So you -- let me  
9 just pose a hypothetical. You would not be able to say the  
10 day after this lease is assigned to the Transform entity,  
11 oh, we got you. You're not a Sears store. Or, oh, we got  
12 you because you haven't paid the 50 percent fee to agree to  
13 an assignment and so, therefore, we're terminating the  
14 lease.

15 On the other hand, that 50 percent provision would  
16 apply -- and I know you don't have that provision, but I'm  
17 just saying, that 50 percent assignment fee would apply if  
18 the Transform entity five years from now wanted to assign  
19 the lease.

20 So I want to make it clear that this language  
21 we're discussing does not abrogate 365(f)(1) or (3). I  
22 don't think in the case of your lease it does because even  
23 if we got into a contested hearing on this, it's pretty  
24 clear to me that that provision which you quoted in your  
25 objection, it either violates -- either your reliance on it

1 to prevent the assignment would violate 365(f)(3) or,  
2 alternatively, it's satisfied because it's, in essence, is a  
3 Sears store. But, you know, I'm not --

4 MR. KENNEDY: Understood, Your Honor.

5 THE COURT: I'm not undoing the Rickles case.

6 MR. KENNEDY: Okay, and I just want to be clear  
7 because I think the record is a little not so clear. We are  
8 not precluding or asserting any restriction on the  
9 assignment --

10 THE COURT: Right.

11 MR. KENNEDY: So it's not a 365(f) issue. It's a  
12 365(b)(3) shopping center issue that there are restrictive  
13 use requirements and provisions that this space is to be  
14 used for a particular purpose and effectively to be selling  
15 merchandise and services normally sold at a Sears store.  
16 That's the restriction --

17 THE COURT: The only point I'm making is you have  
18 to look at time one and time two. Time one is the  
19 assignment and its immediate aftermath. You can't rely on  
20 those provisions to block the assignment.

21 MR. KENNEDY: Correct.

22 THE COURT: But on an ongoing basis, yes. The  
23 assignee needs to perform. So --

24 MR. KENNEDY: Understood, and I think that's --

25 THE COURT: I think you just need to make that

1 clear.

2 MR. KENNEDY: -- what I wanted to clear for the  
3 record. And --

4 THE COURT: Maybe you add a new paragraph as well  
5 or a new sentence to cover that point, as you suggested.

6 MR. BAREFOOT: We will make that change in the  
7 proposed order.

8 THE COURT: Okay.

9 MR. KENNEDY: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. BAREFOOT: Your Honor, the next section of the  
12 agenda are counterparties that raised issues on service of  
13 process or also sort of on identification of the specific  
14 lease, and my colleague Ms. Massey is going to handle the  
15 portion of the agenda.

16 THE COURT: Okay.

17 MS. MASSEY: Good morning, Your Honor.

18 THE COURT: Morning.

19 MS. MASSEY: Kate Massey, Cleary, Gottlieb, Steen,  
20 and Hamilton for Transform Holdco, LLC. Your Honor, as you  
21 can see on the agenda, a handful of parties objected to  
22 various of the Debtors' notices of potential assumption and  
23 assignment and asserted cure amounts back in January. These  
24 objections were all raised in conjunction with other cure  
25 objections as a part of the same objection in all of these

1 cases.

2 They raised notices and ancillary points as an FYI  
3 sort of point. With respect to the notice related  
4 objections that they raised, the parties listed here on the  
5 agenda -- CAPREF, Manco Florida, Shidler/West Finance, and  
6 Camegaran -- the parties all asserted just that the name of  
7 the counterparty was incorrectly represented on the original  
8 notice of potential assumption and assignment or cure  
9 notice.

10 I can represent to the Court that all of these  
11 errors that were pointed out have been corrected in  
12 Transform's subsequent notices of assumption and assignment.  
13 I'm happy to discuss them one by one if Your Honor would  
14 prefer.

15 THE COURT: Well, let me make sure I understand.  
16 You're right that these points were raised very much in  
17 passing in each case at this point.

18 MS. MASSEY: Yes.

19 THE COURT: In each case, there was a response, so  
20 the people who responded obviously got notice.

21 MS. MASSEY: Yes.

22 THE COURT: Is it -- in case of any of these four  
23 landlords -- I didn't think this was the case. I just want  
24 to make sure. Did any of them say, this isn't our property  
25 at all, this really belongs to someone completely unrelated

1 to us?

2 MS. MASSEY: No, Your Honor. Only --

3 THE COURT: It's just that there was a different  
4 entity than CAPREF Burbank, LLC, but they -- closely related  
5 and they just wanted to point it out. That's really what  
6 you're saying?

7 MS. MASSEY: Exactly, Your Honor.

8 THE COURT: Okay. All right. I think you're  
9 being extra careful on this and I don't fault you for that,  
10 but do any of these four landlords have anything to say on  
11 this aspect of the objection? It seems to me kind of a no-  
12 brainer that it's now -- they were just pointing out that  
13 you have to get the paperwork exactly right as far as due  
14 process notice or Bankruptcy Rule notice. They clearly had  
15 notice of the issue.

16 MS. MASSEY: That's right, Your Honor.

17 THE COURT: Okay. Does anyone want to say  
18 anything more on this aspect of the agenda or the objections  
19 to the assignment motion? All right. Well, I'll overrule  
20 each of those objections, then, on this record.

21 MS. MASSEY: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. BAREFOOT: Luke Barefoot from Cleary Gottlieb  
24 for the record. Moving along, Your Honor, since we've  
25 already adjourned the Bradshaw Westwood Trust objection --

1 THE COURT: Okay.

2 MR. BAREFOOT: We then move to the small universe  
3 of parties who objected concerning insurance requirements.  
4 I think you could kind of see this as, really, part and  
5 parcel of the adequate assurance issue. As I indicated K-  
6 Bay Plaza and Pennsee are either resolved or adjourned. I  
7 believe it is -- I believe that the insurance certificates  
8 that were attached to Mr. Riecker's declaration satisfy the  
9 insurance requirements under any of the remaining leases,  
10 and on that basis, I would ask that these objections be  
11 overruled.

12 THE COURT: Okay. I think the only two remaining  
13 ones are ARE Investment Company and SWZ, LLC?

14 MR. LYNCH: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. LYNCH: For the record, Christopher Lynch,  
17 Reed Smith for ARE Investment. Your Honor, counsel is  
18 correct and I won't get into the numbers because I know  
19 these were filed under seal, but putting aside the limits  
20 which appear to be in order, in particular the certificate  
21 of property insurance does not identify the properties  
22 covered. It simply says the insureds are Transform Holdco,  
23 LLC and its subsidiaries which, presumably, will include  
24 either the assignee or its designee of ARE's lease.

25 However, it is a missing piece that we'd like to



1 have filled in, whether it be on the record or privately.  
2 We'd like to make sure that this property -- as leased  
3 property which actually these (indiscernible) papers, Your  
4 Honor. There's a lot of concerns about the condition the  
5 Debtor left it in. We're concerned about fire hazards, et  
6 cetera. Making sure we're insured is one of our paramount  
7 concerns.

8 So we'd like some sort of assurance that this  
9 property is, in fact, covered by this policy.

10 THE COURT: Okay. Well, does the reference to  
11 subsidiaries include all subsidiaries?

12 MR. BAREFOOT: Your Honor, there are no exclusions  
13 and it is also our intent, as is customary now that these  
14 policies have been bound, to provide certificates to  
15 individual landlords where the lease requires identifying  
16 them as additional insureds.

17 THE COURT: Okay.

18 MR. BAREFOOT: So I think that process would  
19 eliminate any question.

20 THE COURT: All right. Why don't you just -- why  
21 don't you put that in the order that you'll be providing the  
22 certificates wherever the lease required it?

23 MR. BAREFOOT: We will do that.

24 MR. LYNCH: That would satisfy this objection,  
25 Your Honor.

1 THE COURT: Okay.

2 MR. LYNCH: Thank you.

3 MR. LEMKIN: Your Honor, Joe Lemkin, Stark and  
4 Stark on behalf of SWZ. It was this -- I don't want to  
5 repeat what was just said before me. It was the same issue.  
6 The certificates provided were on behalf of (indiscernible)  
7 the assignee, so --

8 THE COURT: Well, and subsidiaries.

9 MR. LEMKIN: And subsidiaries, yeah.

10 THE COURT: So the record shows that's all  
11 subsidiaries and the order's going to provide for --

12 MR. LEMKIN: Thank you.

13 THE COURT: -- the provision of the certificate  
14 where the lease requires it. Okay. All right, so I think  
15 on the record, then, those two objections are resolved.

16 MR. BAREFOOT: Thank you, Your Honor, and we will  
17 add that provision that you suggested to the order.

18 THE COURT: Okay.

19 MR. BAREFOOT: Before we move to Item Number 8 on  
20 the agenda, we did have one resolution with a party that  
21 requires us to read the resolution into the record. If it's  
22 okay with Your Honor, I'd like to turn that over to my  
23 colleagues, Mr. Livingston.

24 THE COURT: Okay.

25 MR. LIVINGSTON: Good morning, Your Honor.

1 Matthew Livingston, Clearly, Gottlieb, Steen, and Hamilton  
2 for Transform. This is with respect to the objection of  
3 landlord K I-29 2004, LLC. This was mentioned at the end of  
4 our omnibus reply. We have reached a resolution with this  
5 landlord -- Transform and the landlord.

6 With respect to the resolution of that objection,  
7 the counsel to the landlord has requested that we read the  
8 terms of the resolution quickly into the record and those  
9 terms are consistent with a future resolution of this record  
10 -- of this objection, which we hope will happen in the near  
11 future.

12 So the terms of that resolution are subject to the  
13 disputed cure procedures. All valid cure amounts shall be  
14 paid by the buyer with respect to the leases of the K I-29  
15 2004, LLC landlord, regardless of whether such amounts  
16 related to the period prior to March 14th, 2019, when the  
17 tenant under lease was Troy Coolidge No. 18, LLC or after  
18 March 14th, 2019 when the tenant was K-Mart Corporation.

19 And just as context, the objection was with  
20 respect to the landlord did not believe that the Debtor was  
21 a party to this lease. We provided evidence that the lease  
22 was transferred to K-Mart, so that issue has been resolved.

23 The language in the assignment dated March 14th,  
24 2019 from Troy Coolidge No. 18 to K-Mart referencing  
25 excluded liabilities is not intended to limit and does not

1 intend to limit landlord's remedies against Troy Coolidge  
2 No. 18 or K-Mart of future assignees including, but not  
3 limited to, Transform Leaseco with respect to ground  
4 tenant's obligation of the lease, whether or not such  
5 obligations arose before or after March 14th, 2019.

6 The landlord will have a reasonable opportunity to  
7 inspect the leased premises and improvements thereon and the  
8 parties reserve their respective rights and defenses as to  
9 whether the landlord is entitled to increase its claim for  
10 cure costs based upon such inspection, notwithstanding the  
11 Court deadline for asserting such claims has passed.

12 The parties reserve all rights with respect to the  
13 valid cure amounts which will be reserved in accordance with  
14 the disputed cure procedures set forth in the revised  
15 assumption and assignment order and subject to the  
16 foregoing, the K I-29 2004 LLC landlord's objections are  
17 resolved and the leases will be assumed and assigned to the  
18 buyer.

19 THE COURT: Okay.

20 MR. LIVINGSTON: I'm not sure if counsel to the  
21 landlord is in the courtroom, but I believe that reflects  
22 our understanding and agreement.

23 THE COURT: Okay. Does that counsel want to say  
24 anything on this? All right. Well, I'm assuming it does,  
25 too, then.

1 MR. LIVINGSTON: Okay. Thank you, Your Honor.

2 MR. BAREFOOT: Luke Barefoot for the record, Your  
3 Honor. Moving to the last bucket of the agenda, in re-  
4 reviewing these objections, I believe that there are really  
5 only two that raise unique issues that the Court has not  
6 already ruled on. I think the remainder either raised  
7 disputed cure objections or -- which, as we'll discuss are  
8 adjourned -- or are really covered by the true-up and  
9 indemnification points that we just discussed.

10 THE COURT: That was -- in my looking at it, that  
11 was the case, too, but just to be sure, what you're  
12 referring to here, I think, is Plaza del Caribe, Drayton  
13 Plains, Baker Properties Limited Partnership, RREEF America  
14 REIT, and Plaza las Americas.

15 MR. BAREFOOT: That's correct, Your Honor, as well  
16 as Fringe Area, which is Number A. I do think that there  
17 are unique issues with respect to the City of Minneapolis  
18 and with respect to McDonald's Corporation which will be  
19 addressed by my colleague --

20 THE COURT: I thought Fringe Area was just the one  
21 that, they disputed whether you owned it or not -- whether  
22 Debtor owned it or not.

23 MR. BAREFOOT: I believe that's the City of  
24 Minneapolis.

25 THE COURT: I thought they both were. Maybe I got

1 that wrong.

2 MR. BAREFOOT: I believe that the other one that  
3 disputed whether it was a Debtor property is the one for K  
4 I-29 that Mr. Livingston --

5 THE COURT: Okay.

6 MR. BAREFOOT: -- just addressed.

7 THE COURT: All right. In any event, therefore,  
8 does anyone representing Plaza del Caribe, Drayton Plains,  
9 Baker Properties Limited Partnership, RREEF America REIT II  
10 Portfolio, Plaza las Americas, Inc., and/or maybe Fringe  
11 Area (II) S.E. have anything to say on this aspect of --  
12 it's basically the catch-all aspect?

13 MR. SAYDAH: Your Honor, Gilbert Saydah of CKR Law  
14 on behalf of RREEF America. Your Honor, that's identified  
15 as --

16 THE COURT: Okay.

17 MR. SAYDAH: -- 8F. Your Honor, I believe my co-  
18 counsel, Mr. Keller, has already resolved the issue with  
19 respect to this objection.

20 THE COURT: Okay. All right.

21 MR. SAYDAH: I'm not sure, actually, why we're  
22 listed on here, so --

23 THE COURT: Okay.

24 MR. SAYDAH: I think we're good. Thank you.

25 THE COURT: Okay. Thank you. All right, so why

1 don't we then turn to Minneapolis and McDonald's.

2 MR. BAREFOOT: Very good, Your Honor. On the City  
3 of Minneapolis, they raised an issue that according to their  
4 records, the ground lease for the property that they had  
5 previously leased to K-Mart Corporation was not in the name  
6 of the Debtor but instead was in the name of a Debtor -- a  
7 non-Debtor special purpose entity, Troy Coolidge 42, LLC.

8 We attached to the declaration of Kimberly Black  
9 evidence that subsequent to the petition date but prior to  
10 the entry of the sale order or of the assumption and  
11 assignment order, the non-Debtor entity, Troy Coolidge,  
12 assigned all of its right, title, and interest to the ground  
13 lease to K-Mart Corporation, a Debtor, who in turn proposes  
14 to assume and assign the lease to Transform.

15 I understand that the City of Minneapolis may not  
16 have been made aware of that transfer. Its records may not  
17 have reflected that transfer as of the time it made its  
18 objection, but we believe that based on the materials that  
19 were attached to Ms. Black's declaration there's more than  
20 ample evidence that this is now Debtor property, prior to  
21 being assumed and assigned free and clear to Transform.

22 THE COURT: Okay. And I've read that declaration  
23 and the exhibits that are attached to it. Is counsel for  
24 Minneapolis on the phone or here in courtroom? Okay. I  
25 believe that they've been satisfied by that filing and to

1 the extent they have not been, I'm satisfied by it that, in  
2 fact, one of the Debtors has the tented interest under that  
3 lease and has the ability to assume and assign it to -- or  
4 simply to assign it to Transform.

5 MR. BAREFOOT: Thank you.

6 THE COURT: So I'll overrule that objection.

7 MR. BAREFOOT: Your Honor, the last sort of actual  
8 unique issue here is with respect to McDonald's corporation  
9 as to whom our firm is conflicted and Ms. Santillo will  
10 address that.

11 THE COURT: Okay.

12 MS. SANTILLO: Good morning, Your Honor. Kristen  
13 Santillo from Gelber and Santillo on behalf of Transform  
14 Holdco. The parties have agreed that since the Debtor is  
15 not the lessee in this situation that the deadline in  
16 365(d)(4) doesn't apply and that we should agree -- that we  
17 agreed to mark this off calendar for further discussions  
18 with all the parties reserving all rights.

19 THE COURT: Okay. When you say "this," I mean,  
20 there were a number of noticed to McDonald's on various  
21 properties. Are you referring to all of the properties or  
22 just the most recent one?

23 MS. SANTILLO: With regard to the leases and  
24 easements that are at issue in the objection.

25 THE COURT: Which includes all of them?



1 MS. SANTILLO: Yes.

2 THE COURT: Okay. All right. And none of those  
3 were leased by the Debtor?

4 MS. SANTILLO: No.

5 THE COURT: Okay. All right. Then I agree with  
6 your solution.

7 MS. SANTILLO: Thank you.

8 THE COURT: Okay. I just want to clear up one  
9 thing. I had mentioned Fringe Area (II) as perhaps being  
10 one based on Debtors not owning the tenancy interest. That  
11 was inaccurate. It also is basically a cure objection and  
12 like the other ones that we addressed in this group of  
13 objections, it really isn't one that raises a miscellaneous  
14 basis to object to the assignment of the lease.

15 So with the exception of the adjourned matters and  
16 as resolved on the record in a few cases, I will overrule  
17 the objections or deem them resolved based on the changes to  
18 the proposed order.

19 As far as the order is concerned, I think the one  
20 area that people will definitely want to see is the revised  
21 language in Paragraph 16 and/or maybe a new Paragraph 17.  
22 You have a week, I think. It doesn't need to be signed this  
23 afternoon, but so I think you don't need to formally settle  
24 that order but you should circulate it to the landlord's  
25 counsel who raised the cum onore objection as well as the

1 other usual suspects before you send it to chambers and  
2 don't hesitate to send it to chambers if you're still in  
3 discussions with people and you're facing the D4 deadline,  
4 but at least give them some time to make sure it's  
5 consistent with today's ruling.

6 MR. BAREFOOT: We will do that, Your Honor, and  
7 hopefully submit it tomorrow or Friday so that it can be  
8 entered before Monday.

9 THE COURT: That's fine. And one last point. I'm  
10 not encouraging parties to disagree over the proper language  
11 in that section, but if they do, what I'll want is just a  
12 redline of the proposed different language and I'll make the  
13 decision on that.

14 MR. BAREFOOT: Very good, Your Honor. There's two  
15 sort of ministerial issues that I wanted to address and I  
16 believe Ms. Marcus had a question as well.

17 THE COURT: Okay.

18 MR. BAREFOOT: On cure amounts, I -- in the course  
19 of convincing many members in the landlord community that  
20 they did not attend -- need to attend this hearing, I agreed  
21 to describe on the record the cure cost resolution  
22 procedures that are baked into the revised proposed order.

23 THE COURT: Okay, that's fine.

24 MR. BAREFOOT: Under that revised proposed order  
25 and the fairly typical procedures that it spells out, the

1 Debtors will pay -- excuse me, Transform will pay all non-  
2 disputed cure costs as reflected on the designation notices  
3 or in the schedule to the order where the parties have  
4 subsequently agreed on the curs cost amount within five  
5 business days of entry of the order.

6 As to disputed cure costs, in other words, the  
7 difference between Transform's asserted amount and the  
8 timely asserted amount in any filed cure objections,  
9 Transform will establish a reserve with that differential.  
10 The parties are directed, then, to work in good faith to  
11 reconcile any disputed amounts.

12 If, in the course of that process, any party  
13 believes that an impasse has been reached, they can give a  
14 notice of that impasse and if the impasse is not resolved  
15 within five business days after that notice, that party can  
16 then seek to establish a hearing date in accordance with the  
17 prior assumption and assignment procedures order.

18 THE COURT: Okay.

19 MR. BAREFOOT: And --

20 THE COURT: I have one question. When you say  
21 reserve, what's the form of that? Is it an escrow? What is  
22 the --

23 MR. BAREFOOT: It will be held --

24 THE COURT: -- concept?

25 MR. BAREFOOT: -- by Transform in a segregated

1 account.

2 THE COURT: Okay. All right.

3 MR. BAREFOOT: Pending resolution, either by  
4 agreement in, I hope, all cases or a subsequent order of  
5 this Court, all parties' rights and defenses as to cure  
6 costs are fully reserved. And I have been asked to also  
7 make clear that pursuant to these procedures which the Court  
8 will ultimately order, we are not seeking resolution of any  
9 cure costs today except for those listed on the schedules of  
10 the sale order which are undisputed.

11 THE COURT: Right. Okay. That's certainly  
12 consistent with the file documents, although you've cleared  
13 up the mechanism for bringing the matter back to the Court.  
14 Does anyone have anything to say on those procedures? All  
15 right. They're eminently reasonable to me, and I think the  
16 dollar amount we're talking about is about \$8 million. At  
17 least, that's what was stated in the reply?

18 MR. BAREFOOT: You said how much?

19 THE COURT: Eight.

20 MR. BAREFOOT: I believe it's gone up.

21 THE COURT: Okay. All right. Very well.

22 MR. BAREFOOT: The other point that I just wanted  
23 to raise is a relatively ministerial matter. There are a  
24 number of stipulations that we filed and during the course  
25 of this hearing have continued to file to extend the time to

1 assume or reject under Section 365. In many cases, Your  
2 Honor, those were not filed in compliance with the case  
3 management order in terms of the time for presentment. In  
4 all cases, the landlord, the Debtors, and Transform consent  
5 to the terms of those stipulations and are party to the  
6 stipulation, but I believe that to avoid a deemed rejection  
7 under 365(d)(4), we do need Your Honor's imprimatur.

8 THE COURT: Okay. Who is paying for the extension  
9 period?

10 MR. BAREFOOT: Transform.

11 THE COURT: Okay.

12 MR. BAREFOOT: Indisputably.

13 THE COURT: All right. Okay. I -- you could  
14 email each of those to chambers and I'll enter them.

15 MR. BAREFOOT: We will do that, Your Honor. I'll  
16 cede the podium to Ms. Marcus.

17 THE COURT: Oh, did you want to say something on  
18 that point?

19 MR. LEHANE: Yeah.

20 THE COURT: Okay.

21 MR. LEHANE: Good morning, Your Honor. Robert  
22 Lehane, Kelley, Drye, and Warren on behalf of a number of  
23 landlords: Brookfield Properties, (indiscernible)  
24 Development, et al. First and foremost, lot of hard work  
25 went into all the resolutions. Hats off to Luke Barefoot

1 and --

2 THE COURT: Hats off to all the parties, including  
3 the landlords' counsel.

4 MR. LEHANE: With respect to, again -- thank you,  
5 Your Honor. With respect to the stipulations to extend the  
6 time to assume or reject, we represent UR Holdings and there  
7 was one stipulation. UR Holdings is an assignee of a lease  
8 and this was with respect to a stipulation by and between  
9 the Debtors, the buyer, and an entity known as GCCFC 2007  
10 GG9 South Boulevard Properties, LLC; WNY Opportunity Zone  
11 Fund, LLC; and Comm 2006-C8 Shaw Avenue Clovis, LLC.

12 With respect to Amherst, New York, we represent  
13 the assignee, a buyer that believes that that lease has  
14 already been assumed and assigned. There's nothing that's  
15 property of the estate to extent the time for. We filed an  
16 objection. Mister -- we've discussed with counsel for  
17 Transform and understood that that stipulation is not being  
18 presented. If it is being presented, we'd like to have  
19 conversations and address that and if it's not, then it's  
20 not and there's no issue there.

21 THE COURT: Okay. So, let me just make sure.  
22 Your client got in a separate assignment from one of the  
23 Debtors or was it one of the -- Transform --

24 MR. LEHANE: Transform --

25 THE COURT: -- exercise its designation right?

1 MR. LEHANE: That's correct, Your Honor.

2 Transform exercised its designation rights. This was  
3 notices up as a private sale. Our client paid \$1.2 million  
4 plus.

5 THE COURT: Okay.

6 MR. LEHANE: That's fully closed. There was an  
7 objection deadline. That ran. There was no objections as  
8 of the sale order that is final and non-appealable. As of  
9 the running of that objection deadline the assignment was  
10 deemed to happened as of the date of the prior assignment  
11 order.

12 THE COURT: So is that proposed extension  
13 stipulation being withdrawn?

14 MR. BAREFOOT: Your Honor, Luke Barefoot on behalf  
15 of Transform. I'm not sure that we agree with all of the  
16 factual recitations that Mr. Lehane put on the record. But  
17 I will say that we are not -- the universe of the 30 or so  
18 extensions that I referenced did not include and was not  
19 intended to include, and I had agreed --

20 THE COURT: Okay.

21 MR. BAREFOOT: -- with Mr. Lehane that I would make  
22 that clear --

23 THE COURT: All right.

24 MR. BAREFOOT: -- but I forgot.

25 THE COURT: And it hasn't been filed yet, so you

1 don't need to withdraw it.

2 MR. BAREFOOT: It has been filed.

3 THE COURT: Well, then --

4 MR. BAREFOOT: But we will not submit it for -- to  
5 be so ordered because it's subject to Mr. Lehane's  
6 objection.

7 THE COURT: All right. Well, you should decide  
8 whether you're going to withdraw (indiscernible) or not. I  
9 mean, otherwise, it's just going to sit there forever.

10 MR. BAREFOOT: Your Honor, it's our intention to  
11 resolve this before --

12 THE COURT: Okay.

13 MR. BAREFOOT: -- the 364(d)(4) deadline.

14 THE COURT: Okay. Very well.

15 MR. LEHANE: Thank you, Your Honor.

16 MR. GOODMAN: Good morning, Your Honor. Brett  
17 Goodman, Troutman Sanders on behalf of the Bruce Trusts. In  
18 the spirit of the ministerial portion of the hearing, we  
19 filed this morning a stipulation relating to the Bruce  
20 Trusts objection which included a briefing schedule and Your  
21 Honor's chambers, I believe, provided buyer's counsel with a  
22 hearing date of May 23rd. We have been in touch, again,  
23 this morning and wanted to make sure that there was enough  
24 time on your calendar on the 23rd for that hearing.

25 THE COURT: What is it a hearing on? What's the



1 nature of the objection?

2 MR. GOODMAN: So it's an omnibus objection, but  
3 the underlying issue is our position that the lease at issue  
4 has expired so it's an issue of North Carolina real property  
5 law that the parties intend to brief in advance of that  
6 hearing on an accelerated schedule, given that we haven't  
7 exchanged briefs yet, I think we -- both sides wanted to  
8 reserve enough time to put on evidence should we need to, so  
9 --

10 THE COURT: Well, is it -- it sounds like it's a  
11 straight legal issue. Is there evidence as to the facts, as  
12 to what might've caused the expiration?

13 MR. GOODMAN: There could be, Your Honor. I mean,  
14 this lease goes back to 1964. There's various leases,  
15 subleases, sandwich leases in between and we haven't  
16 received the Debtors' legal position yet other than the  
17 designation notice for assumption and assignment, so I think  
18 we just want to make sure that, to the extent there is a  
19 need to put on evidence that there's enough time --

20 THE COURT: Well --

21 MR. GOODMAN: -- on Your Honor's calendar.

22 THE COURT: It's hard for me to know because I  
23 don't know yet what the evidence is or even if there's a  
24 need for any evidence, so you all will have to discuss that  
25 between yourselves. It doesn't sound like it would be a

1 long evidentiary hearing, but I know I don't have a full  
2 day, for example.

3 MR. GOODMAN: No --

4 THE COURT: I may not even have a half day.

5 MR. GOODMAN: Well, I think that's what we were  
6 looking for is to see if you had somewhere in the  
7 neighborhood of three to four hours, so a half day. I don't  
8 know if you have it, Your Honor, so --

9 THE COURT: I don't know either.

10 MR. GOODMAN: We're just -- I think it was raised  
11 by your chambers and buyer's counsel, so --

12 THE COURT: Okay.

13 MR. GOODMAN: I just want --

14 THE COURT: Well, I mean, as both of you probably  
15 know, I generally take -- I always, unless someone has a  
16 real problem with it, take testimony by declaration and then  
17 have cross examination live and have the parties meet and  
18 confer and use their best efforts to agree on the  
19 admissibility of as many exhibits as possible and provide  
20 those documents to chambers with sufficient time before the  
21 hearing so I can review them.

22 So in thinking about that, you'll be able to give  
23 Ms. Li who does the scheduling a better idea of how long it  
24 will take.

25 MR. GOODMAN: Okay, Your Honor. I appreciate --

1 THE COURT: Is there a time? What's the extension  
2 to?

3 MR. BAREFOOT: So the extension of the buyer's  
4 time to assume or reject is May 30th. The hearing is for  
5 May 23rd.

6 THE COURT: Well, again, if it's -- it doesn't  
7 sound like it's a half-day hearing, but you all should do  
8 some prep work and think about that and if it looks like it  
9 actually will be, then you should extend the extension so  
10 that we can do it within the -- sometime in June.

11 MR. GOODMAN: Okay. All right. Thank you, Your  
12 Honor.

13 THE COURT: Okay.

14 MS. MARCUS: Your Honor, again in the nature of  
15 housekeeping, I just wanted to alert you to a looming issue.  
16 The Debtors filed a motion to assume a lease in Riverside,  
17 California. It's ECF Number 3376. At the time, because of  
18 scheduling difficulties, we filed it without a hearing date.  
19 The landlord has filed an objection and we are in  
20 discussions with the landlord and early this morning filed a  
21 notice of presentment extending the 365(d)(4) period to May  
22 31st.

23 We may supplement or amend the motion. We may  
24 make it a motion to assume and assign, a motion to  
25 terminate. We're not quite sure, but we wanted to give you

1 the heads up and we would schedule it for the May 21st  
2 hearing.

3 THE COURT: Okay. That's something you should,  
4 again, discuss with Ms. Li.

5 MS. MARCUS: Thank you, Your Honor.

6 THE COURT: Okay. Thanks. All right. Anything  
7 else?

8 MR. BAREFOOT: Your Honor, nothing further from  
9 Transform and we will submit a proposed order along the  
10 lines of what you directed.

11 THE COURT: I'll look for it Thursday or Friday.

12 MR. BAREFOOT: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at  
14 11:54 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski  
Hyde

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Date: May 10, 2019

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